

## FOIA request re FTCA 28 U.S. Code § 2673 reports

To: DHS and all component agencies

Sent: 2016-09-18

VIA EMAIL to:

DHS FOIA office	<a href="mailto:foia@hq.dhs.gov">foia@hq.dhs.gov</a>
CBP FOIA office	<a href="mailto:CBPFOIA@cbp.dhs.gov">CBPFOIA@cbp.dhs.gov</a>
FEMA FOIA office	<a href="mailto:fema-foia@dhs.gov">fema-foia@dhs.gov</a>
FLETC FOIA office	<a href="mailto:fletc-foia@dhs.gov">fletc-foia@dhs.gov</a>
I&A FOIA office	<a href="mailto:I&amp;AFOIA@hq.dhs.gov">I&amp;AFOIA@hq.dhs.gov</a> , <a href="mailto:quinton.mason@dhs.gov">quinton.mason@dhs.gov</a>
ICE FOIA office	<a href="mailto:ice-foia@dhs.gov">ice-foia@dhs.gov</a>
NPPD FOIA office	<a href="mailto:NPPD.FOIA@dhs.gov">NPPD.FOIA@dhs.gov</a>
OBIM FOIA office	<a href="mailto:OBIM-FOIA@ice.dhs.gov">OBIM-FOIA@ice.dhs.gov</a>
OIG FOIA office	<a href="mailto:FOIA.OIG@oig.dhs.gov">FOIA.OIG@oig.dhs.gov</a>
S&T FOIA office	<a href="mailto:stfoia@hq.dhs.gov">stfoia@hq.dhs.gov</a>
TSA FOIA office	<a href="mailto:foia@tsa.dhs.gov">foia@tsa.dhs.gov</a>
USCG FOIA office	<a href="mailto:efoia@uscg.mil">efoia@uscg.mil</a>
USCIS FOIA office	<a href="mailto:uscis.foia@uscis.dhs.gov">uscis.foia@uscis.dhs.gov</a>
USSS FOIA office	<a href="mailto:FOIA@ussdhs.gov">FOIA@ussdhs.gov</a>

VIA FAX to:

DHS FOIA office      202-343-4011

This request is directed at both the DHS itself *and* every component agency thereof.

This letter is a formal FOIA request for the following records:

1. **Every "report" within the meaning of 28 U.S. Code § 2673**
2. **Every other report, summary, aggregation, briefing, list, database, tabulation, handbook, manual, or similar record re FTCA claims**, including those prepared for agency or component internal use, for Congress, or for any other entity

I *also* request:

3. *all* records relating to the **fulfillment of this request**
4. *all* records **relating to any complaint(s), FOIA request(s)/appeal(s), and/or Privacy Act request(s)/appeal(s) made by me**. This includes, but is not limited to:
  - a. all records relating to the processing my previous requests, complaints, etc;
  - b. all records containing the terms my name, email address(es), and other contact

- or identifying information, listed below my signature; and
- c. all records containing any of my complaint, request or appeal identifiers.

**For all responsive records**, I also request:

1. **all** parts of the record (i.e. **no portion of a record with some responsive portion may be considered "non-responsive"**);
2. **all versions of the record**, whether or not currently in use;
3. **all record metadata**, such as dates on which they were drafted, passed, went into effect, withdrawn, or similar events; person(s) / office(s) responsible; authors; IDs; revision numbers; etc.;
4. a **detailed index of all claims of exemption/privilege**, regardless of whether the record is claimed to be exempt in whole or in part;
5. **access to inspect the record directly**, in its native electronic format; and
6. if any classification applies, **mandatory declassification review (MDR) under E.O. 13526**, and the result of the MDR, including any declassified records.

For all requests above, the **"cut-off date"** is, at the earliest, **the date that you conduct the search**.

**Please prioritize**, in order:

1. the items & subitems above, in the order listed
2. within each item or subitem, most recent records first

**However:**

1. items under the "for all responsive records" section are to be prioritized at the same level as the record they apply to, and
2. this priority order is only for items that may take extra time to respond to, and must *not* be taken as blocking response to an otherwise lower priority item that could be released more quickly than a higher priority item that is pending time-intensive search or review.

**Please note that this request is made after the enactment of Public Law No. 114-185, S. 337 (114th), the FOIA Improvement Act of 2016 (FOIA IA).** The revised statute, as specified in the FOIA IA, applies to this request. FOIA IA § 6. In particular, please note that:

1. you must provide electronic format documents, §§ 552(a)(2) (undesignated preceding text), 552(a)(2)(E) (undesignated following text), 552(a)(3)(B), and 552(a)(3)(C);
2. you may not specify an appeal duration less than 90 days, § 552(a)(6)(C)(A)(i)(III)(aa);
3. you may not withhold any record unless "the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b), or disclosure is prohibited by law", § 552(a)(8)(A)(i);
4. you must segregate and partially release records where possible, §§ 552(a)(8)(A)(ii) and 552(b) (undesignated matter following (b)(9)); and

5. you may not claim deliberative process exemption for records more than 25 years old, § 552(b)(5).

For the purposes of this request, except as otherwise specified, "**record**" means any **agreement, appendix, application, assessment, attachment, checklist, circular, contract, correspondence (including but not limited to email), data management plan, documentation of search parameters, email, email attachment, form, guide, handbook, index of records, information consent agreement, information sharing agreement, instruction, interpretation, kit, management instruction, manual, memorandum, memorandum of understanding, notice, notification, opinion, order, plan, policy, policy statement, processing note, publication, recording, referral, report, request certification form, request detail report, response, rule, script, standard operating procedure, submission, talking point, training document, video, or related record described, regardless** of publication status.

This request specifically **excludes providing me with new copies of any records which have been already provided to me or published online for free** (e.g. on the agency's online "reading room"), **in full or identically to the form that would be provided to me under this request** (i.e. with exactly the same format, redactions, and claimed exemptions).

**This is only an exclusion on providing records under this request that are identical to those already provided to me or available online, and only if I am or have already been provided a link to the online version** (if "available online").

This exclusion is *only* intended to limit unnecessary duplication or provision, not to limit what records are responsive to this request, nor to permit failure to disclose the location of a responsive record available online. If this exclusion would in any way increase the cost or duration to respond to this request, it is to be ignored to the extent it does so.

This request is to be **treated as separate** from all others that I have filed.

Please **forward this request to the FOIA office of every agency component and subcomponent that may have responsive records for independent processing**, with a copy to me.

This request includes any records held jointly by your agency in conjunction with any other agency and/or department, in interagency and/or interdepartmental systems of records, or by other agencies or third parties (including contractors) acting pursuant any agreement with your agency.

With the possible exception of the index of records claimed to be exempt or privileged, this request **does not ask you to create new records**. If you determine that a response would

require creating a new record that you do not want to create, please **first contact me by email** with an explanation of what records you have that would most closely match the information requested and might be acceptable substitutes, so that we can reasonably tailor the request.

In particular, I specifically request that you **do not create new documents in response to this request that are modifications of a digital record**, such as page-view images, print views, scans, or the like. No such creation or substitution is authorized by FOIA or the Privacy Act.

**However, if the same or similar records are held in both electronic and paper formats, this request includes both the paper and electronic versions.** The paper version and the digital version are distinct records, and each may contain distinct information such as handwritten or other markings on the paper copy and embedded metadata in the electronic version.

Furthermore, **to the extent that the native electronic format is proprietary** or otherwise not in format accessible by widely available, open source software, I request that you also provide an **export of the proprietary format into a standard, open format**, as described below.

Please note that the FOIA requires you to service the maximum extent of my request that can be done via e.g. **partial redaction of exempt material**. If you believe some *portions* of a record to be exempt because it contains Sensitive Security Information (SSI, [49 CFR 15 & 1520](#)) or classified information ([18 USC 798](#)), please provide a version of the record **redacted to the minimum extent necessary to remove exempt information** (e.g. per [49 CFR 1520.15](#)), along with adequate information to **describe the reason for each specific exemption**.

In order to help tailor my request, please **provide an upfront estimate of the time and cost it will take to complete this request**, broken down any significant factors that would affect cost to service, number of records in each category, and your estimate of how many records in the category are likely to be exempt.

Please provide me with **incremental updates**, with updated estimates for fulfillment of the remainder, rather than having the entirety of the request be blocked until fully completed.

In accordance with 5 USC 552(a)(3)(B & C) (E-FOIA), Rehabilitation Act § 508, and FOIA IA, please **respond using native format, electronic, machine-processable, accessible, open, and well structured records** to the maximum extent possible. This means, e.g.,

- **native format** records rather than PDFs or other conversions (*note* above re providing *both* native electronic records *and* scans of paper records, if both exist);
- **individual files per distinct source record** (e.g. one .msg file per email), named clearly using the record's identifier, title, and date, rather than a single file containing multiple concatenated records;
- records compliant with the Rehabilitation Act § 508, [36 CFR 1194.22](#), [USAB ATBCB-2015-0002](#), and [ISO 14289-1](#);
- **fully digital text records** rather than scans, rasterizations, or OCR;

- **complete electronic records**, as held on any computer (including phones, servers, backup servers, mail servers, workstations, etc.), including all headers and attachments, fully expanded e-mail addresses, full addresses for address "aliases", full lists for "distribution list" aliases, all embedded and external metadata, complete bitwise digital copies of the original file, all file headers, and all other file content;
- **blackout** rather than whiteout redactions, with **every redaction marked with all exemption(s) claimed for that redaction**;
- **digital redactions** rather than black marker or rasterization;
- lists and structured data as **machine-processable spreadsheets** (e.g. CSV, SQL, XSL) rather than word documents (e.g. DOC, PDF, TXT, RTF) or partial printouts (e.g. PDF);
- **open format records** (e.g. PDF, AVI, MPG) rather than proprietary format records (e.g. WordPerfect, Microsoft Advanced Systems Format (ASF)) (*note above re providing both original, proprietary format records and open format records*);
- **scans** rather than paper copies;
- **digital audio/video files** rather than physical tapes;
- **upload to your Electronic Reading Room** (or other publicly accessible server) rather than personal transfer (for all items *other* than the item requesting records related to me or my requests);
- **email or (S)FTP file transfer** rather than CD;
- **email correspondence** rather than physical mail; etc.

Multiple files may be sent in a combined, compressed form using standard ZIP, TAR, GZIP, BZIP2, and/or RAR formats, or sent as separate files, at your discretion.

However, **do not use a password** on any files, including ZIP files etc. If a password was present in the native format, leave it unaltered, send me the password.

If there are any files you prefer not to transfer by email (e.g. if they are >10MB), **please upload them to me via the link** listed below my signature.

Doing so is secure, completely free to you, and the files uploaded will go to me directly.

Please note that this request **does not request that you physically "duplicate" records**, as I do not want you to create any paper or other physical copy for me — I only want *electronic* versions (or scans, for records that are not fully available in electronic form). As such, I expect there to be no duplication related costs.

Furthermore, I specifically **request access for inspection** of the records, including direct electronic access, in native format, to any electronic records.

I am not currently willing to pay for servicing this request. I may be willing to pay if it is necessary; please send a detailed explanation of the costs and their statutory justification, and service the maximum extent of the request that can be done for free in the meantime.

This request is a qualified request for journalistic, public interest purposes (entitling me to fully

waived fees). **As such, I request public interest fee waiver and journalistic fee waiver.**

1. I have **no commercial interest** in these records.
2. I am a **representative of the news media** and entitled to waiver of all search fees.

**I intend and am able to host and publish all received records online to the general public at no charge, as well to publish highlights, analyses, summaries, commentaries, and other creative, original journalistic work** about responsive records through multiple online publications, such as <https://plus.google.com/+saizai>, and <https://twitter.com/saizai>, <http://s.ai/foia> (among others).

I have previously made journalistic publication, extraction, commentary, and analysis based on my FOIA/PA requests, e.g. relating to TSA, DHS, DOJ, and USPS activities, which have gotten widespread public interest, attention, and comment, and resulted in secondary journalistic publications based on my original work. This includes publications such as The New York Times, Forbes, Bloomberg/BNA, ABC News/Fusion, RT America News, RightThisMinute, and BoingBoing. I intend to do the same with this request.

3. The records are of **significant public interest**, entitled to waiver of all duplication fees, since
  - a. as above, I both am able and intend to disseminate the files widely;
  - b. they would contribute greatly to the public understanding of the operations & activities of your agency, in that they are **records that directly describe agency operations & activities**, as well as the issues and matters described at the top of this letter;
  - c. they are not currently readily available; and
  - d. they are likely to be requested by others.
4. As mentioned above, I am explicitly *not* asking for any physical duplication, but rather direct server-to-server file transfer or email (or posting on your website). The FOIA authorizes duplication fees *strictly* limited to your agency's actual costs, and mandates that your agency use the **cheapest available requested methods**. I consider the actual costs for server-to-server file transfer to be reasonably estimated by, e.g., Amazon S3's pricing (<https://aws.amazon.com/s3/pricing/>).

I request that, **pending fee waiver determination or appeal, you proceed with this request as if it were in the "other non-commercial requester" category.**

If you have any questions or updates about this request, **please contact me *by email*.**

**Please ensure that all of your responses comply with § 508 of the Rehabilitation Act, 36 CFR 1194.22, and UESB NPRM ATBCB-2015-0002.**

In particular, **please make all correspondence pursuant to this request — including notification and responsive records — by email, with native electronic format records**, as specified in the request. I do *not* authorize you to send anything to me by physical mail unless I specifically state otherwise.

My email address is sufficient for all response to this request, and I can provide you with free

means of electronic transfer for records too large to email.

Do **not** respond using ZixCorp "Secure Mail" or any other method that "expires" records from being available. Use only actual email and direct attachments, unless I explicitly request otherwise.

Please let me know **your tracking number(s) for this request upon receipt, as well as your specific estimated completion date.** 5 USC 552(a)(7).

If you believe that any of the requested items are not reasonably described, or that you need any further information regarding my qualification for fee waivers, **please be specific about what you consider vague and what questions I can answer that would clarify them.**

Sincerely,

Sai

(Note: Sai is my full legal name; I am mononymic.)

*President, SaiCorp, Inc.*

*SaiCorp is an organization devoted to public interest journalism, government transparency and accountability, individuals' civil rights, and related issues.*

*NOTE:* This request is made on behalf of *both* myself, Sai (in personal capacity) *and* SaiCorp, Inc. (in official capacity).

Phone: +1 510 394 4724 (please leave voicemail if I do not pick up)

Email: [foia@saizai.com](mailto:foia@saizai.com)

Upload link: <https://www.dropbox.com/request/kbR4D5SjlrVxm1eE4uHn>

Other identifiers for search purposes: "Sai", "saizai", "SaiCorp", "saizai.com", "s.ai", "i@s.ai", "legal@s.ai", "dccc@s.ai", "foia@saizai.com", "tsa@saizai.com", "saizai@gmail.com"

Physical mail: 500 Westover Dr. #4514, Sanford, NC 27330

*NOTE: Do not physically mail responsive records without my explicit request. Send all records in native electronic form, as described above.*